IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 623 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SABIRMIYA @ SABIR JADIYO ABBASMIYA SIPAI

Appearance:

1. Criminal Revision Application No. 623 of 2003

MR IM PANDYA, APP for Petitioner No. 1

MR MEHUL CHINOY for Respondent No. 1

MR PANKAJ K SONI for Respondent No. 2

MR SURESH S PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 25/03/2004

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. counsel

Mr. Mehul Chinoy for respondent No.1 and by ld. counsel Mr. Pankaj K.Soni for respondent No.2. With the consent of ld. counsel appearing for the parties, matter is taken up for final hearing today.

2. In this Revision Application filed by the State, the State has challenged the impugned order dated 17.10.2003 passed below applications Exh.13 & 17 preferred by present respondent nos. 1 & 2 viz. original accused nos. 5 & 6 in Sessions Case No. 132 of 2002 passed by ld. Addl.City Sessions Judge, Court No.2, Ahmedabad, whereby the respondents accused came to be discharged.

3. It has been submitted by ld. APP Mr. Pandya that the impugned order passed by ld. Addl. City & Sessions Judge, Ahmedabad is erroneous and bad in law. There was no scope for evaluation of the police statements recorded by Investigating Agency and statements of three important witnesses namely (i) Rakesh Amrutlal Patel, (ii) Ramesh S.Rathod, and (iii) Mahesh Patel and hence the ld. Sessions Judge ought to have dismissed the discharge application preferred by the respondents accused.

4. I have carefully gone through the statements recorded by the police of aforesaid witnesses. There is no evidence either documentary or oral in the papers of investigation collected by the investigating agency whereby the investigating agency acquired knowledge that both these accused persons or any of them had approached any of these witnesses referred to by ld. APP Mr. Pandya. Identification of accused by showing photograph to prosecution witness can not be said to be a legal admissible evidence in view of the ratio of the decision of the Apex Court in the case of Kartarsing v/s State of Punjab, reported in 1994(3) SCC P.564 dealing with Sec.22 of the Terrorist & Disruptive Activities (Prevention) Act, 1987.

5. Earlier, both these respondents accused were discharged by ld. Addl. City Sessions Judge vide order dated 25.11.2002 and that order of discharge was challenged by State of Gujarat before this Court by moving similar type of Cri. Rev. Application No.83/2003. Accepting the version of the State, this Court remanded the matter to the ld. Lower Court with a direction that trial Court shall reconsider and decide the matter afresh as to whether or not there was a case for framing of charge against the present respondents accused. In light of the observations made by this Court allowing the aforesaid Cri. Rev. Application, ld. Addl. City Sessions Judge again recorded finding in favour of the respondents accused nos. 5 & 6 by giving detailed reasons and rightly concluded that there is no

legal evidence to involve any of the respondents accused with the crime as if they were co- conspirator. Statement of co-accused can not be said to be a legal piece of evidence in the eyes of law and in absence of any prima facie sustainable evidence either oral or documentary, ld. Judge has held that there are no sufficient grounds for proceeding against respondents accused nos.5 & 6 for the alleged offences punishable under Indian Penal Code as well as under Arms Act.

6. In view of above, there is no merits in this Rev. Application. The order passed by ld. Addl. City Sessions Judge is a reasoned order based on material placed before the Court by Investigating Officer/ papers supplied to the accused persons with chargesheet. The Court is aware that while dealing with such application, evidence collected by the prosecution is not to be evaluated and it should be read as it is, but atleast strong suspicions of involvement should emerge from the papers of investigation otherwise the accused can not be asked to face trial of such a serious offence.

7. In view of above, there is no merits in this Cri. Rev. Application and the same is hereby dismissed. Rule is discharged. The impugned order dated 17.10.2003 passed by ld. Addl. City Sessions Judge, Court No.2, Ahmedabad in Sessions Case No.132/2002 below applications exh.13 & 17 discharging the respondents accused nos. 5 & 6 is hereby confirmed. Interim relief granted earlier as to stay of trial of Sessions Case No.132/2002 is hereby vacated.

[C.K. BUCH, J]

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